

USAWC STRATEGY RESEARCH PROJECT

THE ARMY NATIONAL GUARD'S ROLE IN SECURING U.S. BORDERS

by

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The views expressed in this academic research paper are those of the author and do not necessarily reflect the official policy or position of the U.S. Government, the Department of Defense, or any of its agencies.

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ABSTRACT

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U.S. soldiers continue to fight the war on terror overseas, but what about the homeland? Our borders, 5,525 miles with Canada and 1,989 miles with Mexico, are left ineffectively guarded for millions of people to cross into the U.S. illegally. In fact, more than five hundred million people cross the U.S. borders each year and roughly three hundred and thirty million of them are non-citizens. Even after the horrific events of September 11th 2001, little has been done to secure the nation's borders. Last spring the Departments of Treasury and Justice requested support from the Department of Defense to support the Immigration and Naturalization Service (INS) and U.S. Customs Service (USCS) in securing the borders. After reviewing the requests, a memorandum of agreement was signed. The Department of Defense (DoD) mobilized sixteen hundred personnel from the Army National Guard for active duty to support federal law enforcement agencies along the borders. In May 2002 the U.S. Army Forces Command and the U.S. Joint Forces Command completed an assessment of the mission. The resulting report recommended that approximately three hundred soldiers working in remote areas along the border could carry weapons. In addition to these efforts of securing our borders by DoD and Departments of Treasury and Justice, congress voted in favor of legislation to close border security gaps. This legislation authorized congress to provide more funding to the INS to hire more border agents, upgrade salaries and buy much needed equipment. At the end of fiscal year 2002, this temporary mission came to an end. The men and women of the Army National Guard are no longer supporting U.S. borders. While there is discussion in congress about continuing this mission, at this point, no one is certain if it will. Undoubtedly, more should be done to protect U.S. borders, but under its current force structure, the National Guard cannot effectively support this mission and continue its war-fighting and other currently assigned missions. National Guard troops should only be used on a "stop-gap basis" during an emergency for the border security mission. However, with modification to its force structure and changes to the full-time manning, the National Guard could perform its war-fighting mission and assist federal law enforcement agencies in securing U.S. borders

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PREFACE

This paper is the result of the author's Army War College Fellowship at the Center for Strategic and International Studies CSIS.

I would like to thank the entire staff of CSIS for their assistance and ideas throughout the Fellowship. In particular, I would like to express my deepest appreciation to one of my colleagues, CMDR Brian Kelley, USCG Fellow for his thorough review of this report and his assistance throughout the research process.

This report would not have been possible without the experience, wisdom and significant assistance of Lt. Col. Brent Bankus as an academic advisor. I would also like to thank Major Generals Wayne Marty and E. Gordon Stump for opening their doors to me and taking the time to assist me with this project. The research for this report could not have been collected without assistance from the men and women of the Michigan and Texas National Guard. These soldiers performed exemplary on the border mission.

The views presented in this paper are those of the author and do not necessarily reflect the views of the National Guard Bureau, U.S. Army, Department of Defense or the U.S. government.

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THE ARMY NATIONAL GUARD'S ROLE IN SECURING U.S. BORDERS

We cannot and will not know precisely where and when America's interests will be threatened, when America will come under attack, or when Americans might die as the result of aggression. We can be clear about trends, but uncertain about events. We can identify threats, but cannot know when or where America or its friends will be attacked. We should try mightily to avoid surprise, but we must also learn to expect it. We must constantly strive to get better intelligence, but we must also remember that there will always be gaps in our intelligence. Adapting to surprise - adapting quickly and decisively - must therefore be a condition of planning.

— Secretary of Defense Donald H. Rumsfeld

This research will analyze and discuss the role of the Army National Guard in one of the most critical homeland security tasks – U.S. border security. There will be an analysis of the border mission carried out by National Guard troops on federal active duty from March 1, 2002 to September 27, 2002. It will analyze the missions performed by the troops on the northern border and the troops on the southern border. This research paper will discuss both the benefits and the negative aspects of using the National Guard to support this mission. This paper is not about whose responsibility it is to protect our borders, but about how the National Guard can be used in a temporary, emergency role to assist federal agencies in securing the nation's borders. This research will focus primarily on two states, Michigan and Texas. Michigan because it possesses the busiest border crossing in North America and because tighter border security in the north could have a profound affect on the economy of two nations. Texas because of the large number of Texas Army National Guardsmen mobilized to support the federal agencies on the southern border.

While the National Guard certainly has various roles in homeland security, under its current force structure, securing U.S. borders is not one of them. National Guard troops should be used on a "stop-gap basis" only during an emergency in the border security mission. With modification to its force structure and changes to the full-time manning, the National Guard could perform its war-fighting mission and assist federal law enforcement agencies in securing U.S. borders. This proposal is outlined below under the heading *What the Future Should Look Like*.

BACKGROUND

The National Guard played a significant support role after nineteen terrorists hijacked four planes and attacked the United States on September 11, 2001. Moments after the deadly attacks in New York, Washington, D.C. and Pennsylvania, Guardsmen were on the streets

standing side by side with the first civil responders. Close to thirty-eight thousand National Guardsmen were on duty in New York two days after the attack.¹ Virginia, Maryland, and the District of Columbia mobilized over a thousand Guardsmen under State Active Duty (SAD) within hours after the attack on the Pentagon.² Today, National Guard troops continue to fight the war on terror. In fact, 58,894 National Guard and reserve troops are on active duty at home and abroad in support of the partial mobilization.³ That number peaked in late July 2002 above 85,000.⁴ If the United States goes to war in Iraq, Pentagon officials expect to need at least 100,000 more and possibly twice that number of National Guard and reserve troops.⁵

The purpose of the National Guard is as relevant today as it was 366 years ago. The National Guard is able to quickly and effectively respond to the call of both the president and the governors. The National Guard's dual status permits soldiers and airmen to be a federal resource under *U. S. Code, Title 10 – Armed Forces* or a state-controlled law-enforcement and consequence management resource under *U.S. Code, Title 32 – National Guard* or applicable state laws for *State Active Duty*.⁶

Today, according to President Bush, homeland security is one of the most important challenges facing our nation. The National Command Authority is refocusing its philosophy and making fundamental changes to the national security because of the threats of terrorism and the proliferation of weapons of mass destruction. The decisions made today about national security and the organization for addressing these issues could have a profound affect on the military, the economy and the American way of life.⁷ There is discussion in Washington about how to protect U.S. borders and progress is being made. George Nethercutt, a congressman from Washington and a member of the Armed Services Committee, said "Using the National Guard to secure the borders is being discussed, but we are not going to put National Guardsmen arm to arm along our borders."⁸

While Congress spent most of 2002 debating the president's proposal to create a department of homeland security, hundreds of immigrants were illegally crossing U.S. borders.⁹ In October 2002, just a year after the terrorists attacked America, the nation watched as an estimated two hundred illegal immigrants from Haiti jumped into the water and waded en masse onto a busy Miami causeway after the wooden freighter on which they had sailed to America ran aground.

CURRENT STATE OF AFFAIRS

The United States is the world's fourth largest nation with 3.5 million square miles of land and ninety-five thousand miles of tidal shoreline. Each year, 11.2 million trucks and 2.2 million rail cars cross into the U.S. from the over seventy-five thousand mile land and air border shared

with Canada and Mexico. Ships with over seventy-five foreign-flags make fifty-one thousand calls annually to U.S. ports. The country routinely admits millions of visitors from around the world.¹⁰

Prior to September 11, 2001 security analysts and a few elected officials publicly complained about U.S. border vulnerabilities. U.S. borders are no more secure today than they were a year ago, according to a 2000 report by the General Accounting Office. GAO reported in February 2002 that U.S. borders are still "vulnerable to terrorist infiltration."¹¹

The border shared with Canada is commonly referred to as the world's longest "undefended frontier." The *New York Times* reported in February 2002, that only 345 border patrol agents have permanent assignments to watch over the border that divides Canada and the United States. This figure has grown and will continue to grow as new agents are hired. *Fox News*' Sean Hannity interviewed a border patrol agent from Michigan in September 2002, one year after the terrorists' attack on America. Hannity asked Robert Lindemann this question: "So here we have all these terrorists, fifty groups working out of Canada, and our -- isn't it the truth our borders are wide open? Isn't that the truth? Any enemy of America can get across any time they want?" Lindemann answered, "Well, the truth is, yes, we have very limited resources to patrol our borders."¹²

North America's busiest crossing is the Ambassador Bridge in Michigan.¹³ In 2000, 3.3 million trucks crossed the Ambassador Bridge.¹⁴ Immediately following the attack on the U.S., heightened security at the Ambassador Bridge was essential. Increased security without increased manpower led to back-ups stretching thirty miles and delays of up to sixteen hours at the Michigan border.¹⁵ "This crossing is the most important economic link between Canada and the United States," said Federal Transportation Minister David Collenette.¹⁶ A quarter of the daily \$1.3 billion trade between Canada and the U.S. crosses the Ambassador Bridge.¹⁷

In the early hours after the terrorists' attack, Maj. Gen. E. Gordon Stump, Michigan National Guard's Adjutant General, said he was ready to put his National Guard troops on the ground to assist the state with traffic delays along the Michigan-Canadian border.¹⁸ The threat along the northern border appeared to be more economic rather than a threat of more terrorists sneaking into the U.S.¹⁹ In this case; the National Guard Bureau (NGB) could not support the request from General Stump because the mission was a federal undertaking. NGB cannot deal directly with federal agencies according to Col. Gerald Tipton, NGB Judge Advocate General. "The problem is with the flow of money under the Economy Act. This act is only for support from one federal agency to another federal agency," said Tipton. Federal agencies cannot

make a request for military support directly to a state adjutant general. Two months after General Stump's request was denied, the U.S. and Canada signed an accord to tighten border security and part of the plan involved the use of National Guard troops at most concerned ports of entry. The use of military troops was to support the U.S. Customs Services (USCS) and the Immigration and Naturalization Service (INS). The Departments of Treasury (DOT) and Justice (DOJ) sent a formal request to the Department of Defense (DoD) asking for personnel and equipment support on a temporary basis for border security. After reviewing the requests and signing the memoranda of agreement (MOA), DoD mobilized sixteen hundred personnel from the National Guard. DoD called on the National Guard because the soldiers could rapidly deploy within their respective states to support the mission.²⁰

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| U.S.-CANADIAN TRADE FACTS: |
| Total annual trade: about \$420 billion |
| Total daily trade: more than \$1 billion |
| Trade passing through Michigan: about \$200 billion annually |
| Canadian-Michigan trade in 2000: \$69.7 billion |
| U.S. jobs tied to Canadian export: 1.8 million |
| WWW.CUSTOMS.GOV |

FIGURE 1

More border patrol agents are posted along the Mexican border because of the heavy illegal drug and immigrant traffic. In fact, the military mission on the southern border was cut short by two months because DOT and DOJ believed the money allocated for the mission would be better spent along the northern border.²¹ The southern border has 9,065 border patrol agents to cover approximately two thousand miles of territory. However, in some remote areas illegal immigrants are still making their way into the U.S. On the Tohono O'Odham Indian reservation in Arizona, Mexican drug dealers and illegal immigrants are overwhelming the Native American authorities and the border patrol. Richard Saunders, the acting chief of the Tohono Police Department said, "We are overwhelmed with that situation there. In fact, just in the last year alone, our tribal police department has seized more than sixty-five thousand pounds of marijuana destined for the backyard of the United States."²² At full complement, there are only seventy officers who patrol the region seven days a week, twenty-four hours a day. Saunders

said the territory is the size of Connecticut. Edward Emanuel, the chairman of the Tohono O'Odham Nation said, "They're in danger, not only our people, but also the people in the United States, the citizens of the United States, because we don't know who's coming through. It's not just the nationals -- the Mexican nationals, but people from other countries are coming through here."²³

FEDERAL AGENCY'S ROLE IN BORDER SECURITY

Securing U.S. borders is an onerous responsibility for U.S. federal agencies. There are 8.7 million "unauthorized" immigrants living in the United States, according to the 2000 report by the U.S. Census Bureau. Many of these unauthorized immigrants crept across the borders illegally.²⁴ INS is a federal agency within the DOJ that administers the nation's immigration laws.²⁵ One of its primary missions is to maintain control of U.S. borders. The border patrol, a branch of INS, is responsible for securing the seventy-five thousand miles of international boundaries in vehicles, aircraft, or boats, as well as on horseback or on foot.²⁶

The responsibility of the INS official is to keep individuals who lack appropriate documentation and whose records identify them as "potential threats" out of the U.S., according to a report published by the Heritage Foundation in 2002. INS performs this mission through border patrol agents and inspection officials at the borders, seaports and airports.

The USCS, within the DOT, also has a major role in securing U.S. borders. USCS is the primary enforcement agency protecting the borders. It is the only border agency with an extensive air, land, and marine interdiction force and with an investigative component supported by its own intelligence branch.²⁷ USCS Commissioner Robert C. Bonner said in a recent statement to the Heritage Foundation:

"The U.S. Customs Service has broader responsibilities at our Nation's borders than any other federal agency. All people, vehicles, and cargo – indeed, everything entering the United States – must be presented to and cleared through U.S. Customs. Customs officers, who have unique and broad border search authority, are stationed at all 301 ports of entry into the U.S., and Customs has a significant overseas presence as well."

Inspection of cargo is a role of customs officials. They are responsible for assuring that cargo entering the U.S. is what it portends to be.

The Brookings Institute, a think tank in Washington, D.C., conducted a study on the roles and missions of the new Department of Homeland Security (DHS). Part of the study looked at border security. The report said that USCS and INS currently perform at "varying degrees of competence". The Brookings report said that INS has a history of "poor management and low morale." This statement was exemplified when the news media uncovered a story last spring

that reported the INS sent out visa notification letters for two of the hijackers six months before the attacks.

In addition to these two organizations, the United States Coast Guard (USCG) has a critical role in the border mission. The USCG will fall under DHS in March 2003. It is not known at this time what changes the Coast Guard will endure, if any, under the new department. The USCG is charged with a diverse mission as "America's maritime guardian."²⁸ Homeland security is not a new mission for the Coast Guard; however, it is more visible today than it was prior to the September 11, 2001. As part of Operation Noble Eagle, the Coast Guard is at a heightened state of alert protecting more than 361 ports and ninety-five thousand miles of coastline, America's longest border.²⁹ "We continue to play an integral role in maintaining the operations of our ports and waterways by providing a secure environment in which mariners and the American people can safely go about the business of living and working freely," said Cmdr. Brian Kelley, Coast Guard Fellow at the Center for Strategic and International Studies.

The Department of Defense's role in supporting federal agencies at the nation's borders has traditionally been to fight the war on drugs. DoD personnel and units support the USCS and the USCG in this role. The National Guard's Counterdrug Operations employ Army and Air National Guard personnel under *U.S. Code, Title 32* status. Under the consent of the governor, and performing missions outlined in a plan approved by the secretary of the army, soldiers and airmen are actively supporting the operations of the border patrol and USCS.³⁰ Maj. Gen. (Ret.) Richard Alexander, Executive Director of the National Guard Association of the United States (NGAUS), said the missions at border crossings and ports of entry are an expansion of the Counterdrug Program with "a refined focus on terrorism instead of the current drug interdiction focus."³¹

Secretary of the Army Thomas White said before the Senate Armed Forces Committee in October 2001 that DoD must make significant changes in the structure of the department to refocus on the homeland defense mission. White explained that prior to September 11, 2001 DoD responded to acts of terror on two levels: crisis management and consequence management.³² White continued by saying that homeland security is two simultaneous and mutually supported functions: homeland defense and civil support. White said:

"The key to this civil support effort is a layered approach beginning with local and state first responders and progressing through state-controlled National Guard units and then finally to application of federal assets including unique DoD capabilities on an exception basis. "Properly focusing on this complex mission and providing the coordination necessary for joint and interagency action requires a reorganization of DoD efforts".

Secretary White said in an interview with the editor of *National Guard* magazine, “Homeland Security is a mission, but not the mission for the Guard.” White explained that this mission is a matter of balance and the National Guard has to be ready to perform its war-fighting mission as well as the homeland security mission. He said the key to homeland security is the role of the eleven million local and state first responders. Some missions will “always stay with us because of the unique capabilities that we have in the Department of Defense.”

In November 2002, President George W. Bush’s DHS was approved. Once this department is fully established, it will constitute the largest reorganization of the federal government in fifty years.³³ It will combine twenty-two agencies or offices under one roof with almost 200,000 employees.³⁴ The DHS bill vaguely discusses border security. It designates this responsibility to the Under Secretary for Border and Transportation Security. One of the primary responsibilities of the under secretary is “to prevent the entry of terrorists and the instruments of terrorism into the U.S. and to secure borders, territorial waters, ports, terminals, waterways, and air, land and sea transportation systems of the U.S.”³⁵ There is nothing in the bill that authorizes the Secretary of Homeland Security to use military defense or other traditional military activities to secure U.S. borders.

THE NATIONAL GUARD MISSION

“Is it sensible to use our trained war-fighters as rent-a-cops on the borders? “

— Randy Larson, ANSWR

National Guardsmen mobilized for 179 days beginning early March 2002. They assisted INS and USCS officials in eight states along the Canadian border and in the four states along the Mexican border. The twelve states included: Arizona, California, Maine, Michigan, Minnesota, Montana, North Dakota, New Mexico, New York, Texas, Vermont and Washington.³⁶

Eight northern border sectors had the assistance of National Guard aviation assets and personnel to conduct surveillance flights along the Canadian border.³⁷ The aviation assets, called CD-RAID (Counterdrug Reconnaissance and Aerial Interdiction Detachment), were pulled from the National Guard’s Counterdrug Operations to support the border mission. These assets were from six states, with four states providing additional support.

DoD signed the memorandum of agreement with USCS and INS in February 2002. The mission, cited in the MOA, was “to sustain a higher level of monitoring and security at and along the northern and southern borders.”³⁸ National Guard troops supported INS Inspections Division (ID) and Border Patrol (BP) with point of entry security, physical inspections of vehicles, traffic management and pedestrian control.

National Guard duties in support of INS-ID:

Points of Entry Security (POE) – Provide a heightened security presence at all locations.

Physical Inspection of Vehicles – Perform extensive inspection of vehicles entering United States POEs. This physical inspection may include opening vehicle trunks or hoods, inspecting the undercarriages of vehicles, or walking around the vehicle to observe the interiors to determine whether there are any unusual alterations or modifications to the vehicle.

Traffic Management/Pedestrian Control – Perform traffic management and pedestrian control duties at the larger POEs.³⁹

National Guard duties in support of INS-BP:

Intelligence Centers – Operate and manage a Tactical Operations Center in eight INS-BP sectors along the northern border and advise agents in the conduct of terrain analysis.

Aviation (CD-RAID) – Six rotary wing aircraft and crew to observe the INS-BP sectors along the northern border and transport agents responding to locations of reported illegal border crossing. The aviation assets are outfitted with Forward Looking Infrared Thermal Imaging Systems, Nite-sun searchlights, Global Positioning Systems, Law Enforcement Radios, Real-time Video Downlink streaming, and Night Vision Goggles/systems/personnel that allow the aircraft to perform 24/7 mission support.⁴⁰

FIGURE 2

The Department of Defense detailed 710 National Guard soldiers to support INS. The MOA stressed that all duties supported by the soldiers would be “under the direct supervision of an INS officer.”⁴¹ The federal agency also had the responsibility of force protection. Half way into the mission, U.S. Army Forces Command and U.S. Joint Forces Command conducted an assessment of the mission and recommended that three hundred soldiers carry 9mm pistols (114 to support INS and the remaining would support USCS). Lt. Col. Dan Stoneking, National Guard Bureau Public Affairs Officer, said, “The initial mission analysis showed that the soldiers would not perform a task that required the use of lethal or non-lethal force and the lead federal agency would provide force protection.” At the urging of state adjutants general, governors and more than half the U.S. Senate, DoD authorized armed soldiers at seventy-five ports of entry in remote locations. A memorandum written by Senators Patrick Leahy and Christopher Bond to

the president stated, “The Guard needs flexibility to carry out missions, including the ability to protect themselves in the event of danger.”

After a week of training by USCS, the National Guard troops were detailed to USCS to assist at POEs and provide cargo inspection support. The inspections support included vehicles, containers, commercial cargo, baggage and mail. According to the MOA, USCS maintained direct supervision and control over the soldiers.

The border mission was costly to INS and USCS. Together, these agencies reimbursed DoD close to \$74 million.⁴² DoD billed INS and USCS every thirty days for actual expenses incurred in the previous thirty days. The cost of using the National Guardsmen to support INS and USCS included all pay and allowances, FICA and retirement pay accrual, travel, per diem and any other costs incurred by DoD.

THE NORTH AND THE SOUTH

The Michigan National Guard called the border mission “Task Force Wolverine Guardian.” One hundred and forty-three soldiers, primarily from the 1st Battalion, 125th Infantry (Mechanized), were called to support the mission along the Canadian border. Eighty soldiers worked for INS, ten were with the RAID element, ten operated the Command and Control (C2) cell; and 43 detailed to USCS. None of the soldiers from the Michigan National Guard carried weapons.

The key locations, according to the task force commander, Lt. Col. Cary Cuyler, were the Ambassador, Blue Water and International Bridges and the Windsor Tunnel because of the volume of traffic at these POEs.⁴³ “Had it not been for the support of the Michigan National Guard the mission may have failed,” said Lt. Col. Cuyler.

Maj. Gen. Stump criticized the mission because of the *Title 10* military status of the National Guardsmen. Mobilization of the National Guard depends on the mission requirements. Currently, there are three distinct legal authorities available to mobilize the National Guard – see Figure 3.

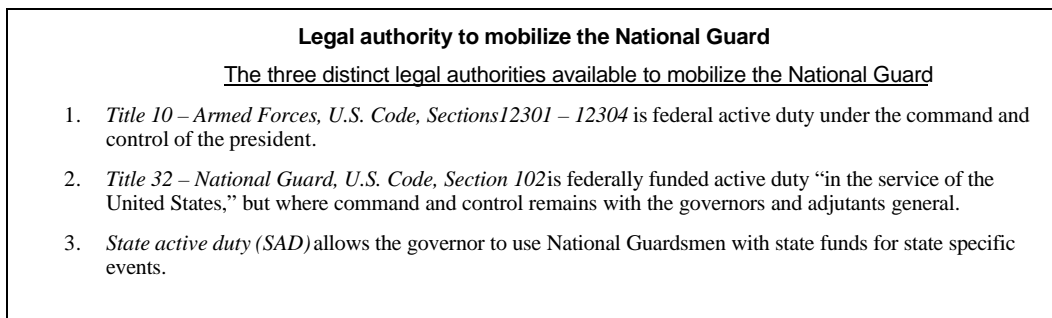


FIGURE 3

“Under *Title 32*, the state leadership could have maintained direct control of the border security mission and provided support immediately when needed,” said Stump. Stump complained that under *Title 10* status many issues surfaced and delayed the mission for months. He said that this mission should have been conducted in the same manner as the National Guard’s role in securing the airports. Over seven thousand members of the National Guard provided security at airports in a *Title 32* status after September 11, 2001?. The airport mission was authorized by the president and implemented by the governors. Col. Tipton said the president “insisted” that DoD expand the use of *Title 32, Section 502* - “other duties” for the airport mission.

General Stump identified critical issues that developed mainly because of the *Title 10* status of the Guardsmen.

- *Boots on the Ground.* Michigan officials wanted “boots on the ground” at the border immediately after the terrorist attack. Under *Title 32*, General Stump believed that this was possible. “Customs and the border patrol needed support immediately at the borders after September 11,” said Stump. This mission did not officially get off the ground until March 2002, six months after the requirement was identified.
- *Mobilization.* Upon mobilization, soldiers from the Michigan National Guard were under the military control of First U.S. Army. The mobilization process for these soldiers took place three to four hours south in another state - Fort McCoy, Wisconsin. Lt. Col. Cuyler said that moving the soldiers to Fort McCoy “was a waste of time” because the personnel had already in-processed at the state level. Under SAD or *Title 32*, National Guardsmen can deploy almost immediately. Guardsmen can usually in process at their unit or at the State Area Command. During a state emergency, like a natural disaster, National Guardsmen are an immediate asset for the governors. Maj. Gen. Alexander said, “The decision to federalize the National Guard to support non-DoD agencies under *Title 10* set an unwise and unacceptable precedent for similar future service. Federalizing the National Guard under *Title 10* prevents continued individual and unit training of all federalized Army National Guard soldiers.”
- *Posse Comitatus Act (PCA).* The debate surrounding PCA is nothing new and is currently on the agenda of many in congress. Since 1878, the act has been amended in response to particular security situations. The PCA generally prohibits U.S. military personnel from “interdicting vehicles, vessels and aircraft; conducting surveillance, searches, pursuit and seizures; or making arrests on behalf of civilian law enforcement

authorities.”⁴⁴ Prohibiting direct military involvement in law enforcement is in keeping with long-standing U.S. law and policy limiting the military's role in domestic affairs.⁴⁵ Most recently, the law was relaxed so the military could provide support for civilian authorities at the Salt Lake City Winter Olympics.⁴⁶ The act also was adjusted to allow the military to help drug enforcement agencies, enforce health and quarantine laws and even protect national parks over the years. After September 11, 2001, posse comitatus is again being reviewed. PCA only applies to federal entities and does not apply to National Guardsmen on *Title 32* or *SAD*. General Stump said this mission required the soldiers to be under the control of the governors, who best know what resources are available, within their respective states.

- *CD-RAIDs*. “Using the CD-RAID for the border mission was a waste of taxpayer’s money. The RAID is an important counterdrug asset and plays a key and demanding role for the state. This mission tied their hands and they were not able to provide effective assistance,” said Lt. Col. Cuyler. Cuyler was referring to the federal status of the RAID asset. The mission for the CD-RAID was “to support the border patrol with aviation assets outfitted with the following equipment: Forward Looking Infrared Thermal Imaging Systems, Nite-sun search lights, Global Positioning Systems, Law Enforcement Radios, Real-time Video Downlink streaming, and Night Vision Goggles/systems/personnel that allow the aircraft to perform 24/7 mission support.”⁴⁷ The CD-RAID operation falls under *Title 32* when performing its congressionally authorized drug interdiction mission. That mission is to provide support to the “nation’s law enforcement agencies with aerial observation command and control and marijuana eradication.”⁴⁸ The OH-58, RAID aircraft, “is provided to selected states to use specially configured sensor equipment and avionics in support of counterdrug activities.”⁴⁹

The federal status placed extreme limitations on the soldiers assigned to the aviation section. “The restrictions placed on us by the *Title 10* status pretty much brought everything we may have been able to do for the border patrol to a screeching halt, “ said Chief Warrant Officer Five James Estep, Michigan National Guard CD-RAID Commander.⁵⁰ Chief Estep had ten soldiers assigned to his section. They flew over four hundred hours for the border mission but did not accomplish a great deal, according to Estep. Under *Title 10*, the restrictions prevented the aviation section from any direct participation in “identifying from the air suspicious activities, following boats or vehicles, or deviating from the prescribed flight plan.”⁵¹

Estep said, "This mission could have been better suited by allowing the CD-RAID to expand the current mission to include homeland security as well as counterdrug operations and keep us on *Title 32*."

The relationships among the border patrol, USCS and the Texas National Guard's Counterdrug Operation proved to be an added benefit for the soldiers on the Mexican border. Since 1989, Texas National Guardsmen have been supporting law enforcement agencies at some of the busiest drug smuggling ports in North America. Law enforcement agencies (LEAs) working with Texas National Guardsmen call them "America's quiet drug fighters."⁵² Texas soldiers and airmen routinely provide support to LEAs by providing specialized training, surveillance missions, detection and monitoring operations and drug demand reduction programs. The National Guard is instrumental in many of the biggest drug seizures in the state.⁵³

Texas National Guard Significant Seizures FACT SHEET⁵⁴

| | | | |
|----------------|-----------|-------------------|-------------------|
| Houston | 26 Jan 02 | Ecstasy Pill | \$75,000 |
| Laredo | 13 Feb 02 | Marijuana | \$396,300 |
| Laredo | 19 Feb 02 | Marijuana | \$150,000 |
| El Paso | 21 Feb 02 | Cocaine/Marijuana | 2058pds/\$2.2 mil |
| Laredo | 01 Mar 02 | Marijuana | \$121,170 |
| Laredo | 06 Mar 02 | Marijuana | \$295,200 |
| Laredo | 08 Mar 02 | Marijuana | \$605,600 |
| Houston | 14 Mar 02 | Cocaine | \$1.2 mil |
| Corpus Christi | 26 May 02 | Cocaine | \$118 mil |

TABLE 1

The Texas National Guard experienced many of the same concerns as the northern border troops, but its main issue was the lack of a viable command structure. Soldiers were spread out over a thousand-miles with some duty locations being extremely isolated. The Texas National Guard's Task Force Commander, Lt. Col. Juan Vera said he had little oversight of the mission or command and control over his 411 field artillery and infantry soldiers.⁵⁵ In addition to his temporary assignment as the Task Force Commander, Lt. Col. Vera is a battalion commander in the 49th Armored Division Artillery. Most of the soldiers assigned to the border mission were from his battalion. "Under *Title 10*, and the way the soldiers were detailed to USCS and the border patrol, I, the National Guard commander, lost my authority over the

soldiers,” he said. MOAs stated that DoD “will transfer detailed personnel” to the USCS and border patrol and the “members of the United States Armed Force will not be subject to the direct or indirect command of the military chain of command.”⁵⁶

Maj. Gen. Wayne Marty, Texas National Guard’s Adjutant General said that the command structure presented a problem. “There was an awkward command arrangement, but we made it work,” he said⁵⁷. Marty said a military commander should be in control of his soldiers at all times. Under the direction of Marty, Vera made routine visits to all the POEs. Even though he had no mission oversight, Vera wanted to ensure that his soldiers were taken care of. “It could be argued that a soldier’s loss of life could have been prevented if the lead federal agency had followed the guidance provided” by the Texas National Guard and Fifth U.S. Army.⁵⁸ Vera advised the lead federal agency that the soldiers were not permitted to travel home in the first few weeks on the border. Soldiers needed to adapt to the mission and the long duty days, according to Vera. The guidance given by Vera was not enforced by the federal agency.⁵⁹ During the first week of the mission a soldier, driving home after working the night shift, was killed in an automobile crash. “It was clear that the federal agencies were not concerned with the soldiers’ off duty activities,” said Vera.

There was also an awkward command structure with Fifth Army. Texas National Guardsmen mobilized for duty at Fort Bliss, Texas. This was a nine-hour drive for some soldiers. At the mobilization station, Vera and his staff were not included in the planning and execution of the mission. They were often left out and not informed about schedules and time changes.

Another area of concern for Maj. Gen. Marty was not arming his soldiers. General Marty was one of the adjutants general who fought DoD to authorize the use of weapons for the soldiers on border mission. “These are soldiers. You can not put them out on porous borders without protection,” he said. It took four months before DoD approved the request for the soldiers to be armed. By this time, the federal agencies decided against arming the soldiers on the Texas border. Timothy Ford, a USCS officer in Laredo said it was because “they had adapted” to the soldiers being armed and the mission “was working smoothly.”

Many of the USCS and border patrol agents in Texas have worked with the National Guard on counterdrug missions. Ford said, “The soldiers I worked with on this mission were outstanding. They were professional and hard working. Our personnel were finally able to take time off when the soldiers came.”⁶⁰ He also commented that most of the soldiers could speak Spanish fluently, which was an immense benefit on the border.

FEDERAL INITIATIVES

The federal government is facing numerous challenges addressing homeland security; and over the past year it has made significant progress. Immediately after September 11th, the president established the Office of Homeland Security (OHS) and the Homeland Security Council (HSC). Evident by news reports, emphasis on homeland security is ongoing throughout the federal government. The DHS will consolidate many of these actions and coordinate the efforts of federal, state, and local governments and the private sector. A substantial amount of federal funds have been appropriated to homeland security. Following the attack on the U.S., funding for homeland security increased with a \$40 billion emergency supplemental appropriation.⁶¹

The federal government is also increasing its focus on border security. In May 2002, President Bush signed into law the Enhanced Border Security and Visa Entry Reform Act – H.R. 3523. In his address to the nation, the President said,

“The bill I sign today enhances our ongoing efforts to strengthen our borders. The purpose of this bill is to help our country do a better job of border security. It authorizes four hundred additional inspectors, investigators, and other staff on the INS (Immigration and Naturalization Service) over the next five years. We're adding manpower, obviously. It makes it easier for the INS and other federal agencies to get better information about people and products that come into America. It requires every foreign visitor desiring entrance into the United States to carry a travel document containing biometric identification -- that would be fingerprints or facial recognition -- that will enable us to use technology to better deny fraudulent entry into America.”⁶²

The latest DoD initiative is the Unified Command Plan (Plan). Proposed changes to the Plan are designed to make the U.S. military structure more effective and to better address today's emerging threats. It is characterized as the most significant reform of the nation's military command structure since the first command plan was issued shortly after World War II.⁶³ One significant step of the Plan, among other things, was the establishment of U.S. Northern Command (NORTHCOM). The NORTHCOM commander will be charged with protecting land, aerospace, and sea defenses of the U. S. Its geographic area will include the continental United States, Alaska, Canada, Mexico, portions of the Caribbean, and the contiguous waters in the Atlantic and Pacific oceans.⁶⁴ NORTHCOM will encompass the homeland defense duties now under the control by the Joint Forces Command. NORTHCOM will also help DoD deal with natural disasters, attacks on U.S. soil, or other civil difficulties. NORTHCOM will provide a more coordinated military support to civil authorities at the state and local levels, and other federal agencies like the Federal Bureau of Investigation (FBI), and the

Federal Emergency Management Agency (FEMA).⁶⁵ FEMA now falls under the umbrella of the DHS.

Despite the programs outlined in the National Strategy for Homeland Security and other federal government initiatives to beef up protection at the borders, it takes time for these initiatives to evolve. While this is occurring alternatives will need to be put into place. The federal government may consider the following suggestions.

- The border security mission should be a joint DoD responsibility. Relying solely on the National Guard was effective for this mission but it needs to remain a temporary mission. The National Guard needs to be available for other critical missions when called by the governor or the president.
- The use of a civilian security type agency to reinforce defense at the borders until more border patrol agents can be hired should be considered. Currently it takes at least eighteen to twenty-four months to hire a new agent or USCS official. USCS is in the process of streamlining this process to eight months.⁶⁶
- Congress should consider identifying, equipping, training and funding elements of local and state first responders along the border states for this mission. These local and state emergency responders are currently involved with supporting the border mission on an emergency basis. With proper training and equipment, they could be an additional resource.
- Congress should review the salaries paid to border patrol and USCS officials. A recent article in the *Los Angeles Times*, reported that many border agents are leaving INS to work for the Transportation Security Agency (TSA) because of better pay and more satisfying jobs. About 2,000 border patrol officers and immigration inspectors have left the INS since October 1, 2002.⁶⁷

WHAT THE FUTURE SHOULD LOOK LIKE?

To Prevail: An American Strategy for the Campaign Against Terrorism, written by senior fellows at the Center for Strategic and International Studies (CSIS) recommended, "The secretary of defense should establish a new commander in chief for homeland defense and make homeland defense the primary mission of the National Guard." This recommendation would have a profound affect on the nation's security because it would strip the Army of its war-fighting reserve units. Other studies suggest that the National Guard should perform its war-fighting mission and be the primary homeland defenders with no proposed changes to the current force structure. This proposal is not practical. The National Guard is already stretching beyond its capabilities with the war on terror and homeland defense missions.

In order to meet the needs of the nations, the National Guard must maintain its war-fighting mission and with modifications to its force structure support the homeland defense mission. Dr. Phil Anderson, Senior Fellow of Homeland Security at CSIS said, "We need a plan on the table that will allow the Nation Guard to maintain its war-fighting mission and protect the homeland." Anderson said the Army National Guard is the combat reserve of the United States Army. This is a critical mission that cannot be taken away from the Army.

The border mission is only one of the homeland defense priorities that the National Guard could support with changes to its current force structure. Dr. Anderson said, "Right now we are using the National Guard as a constabulary force on the borders. We had armor and infantry soldiers working at the airports. We had field artilleryman checking cargo and personnel at the borders. These soldiers are trained combat, war-fighters, not constabulary forces." National Guard should also be a key player in supporting the defense of the homeland because it is geographically dispersed and has deep traditional ties in the communities, he said.

In order to effectively perform its war-fighting mission and protect U.S. borders, the National Guard would have to be reorganized, trained, equipped and funded. The future of the Army National Guard should look like this: a strong combat war-fighting component of the Army; and highly skilled specialized units and personnel to perform the homeland defense missions, which would include border security.

Immediate actions should be taken while the country prepares for the future. For example, congress should authorize and fund a program for the National Guard that deals strictly with border security issues. This would require the National Guard to work closely with USCS, INS BP, and USCG on border security initiatives. This initiative may only involve the border states. The program could replicate the highly successful National Guard Counterdrug program in which each state's governor adopts and administers a program of full-time National Guard support for law enforcement programs.⁶⁸

DoD should identify and select National Guard units and personnel to be specially trained and resourced for the border security mission, excluding those units used in the Army's submission to the Joint Strategic Capabilities Plan (JSCP) 1998, change 1, which was signed by the Chairman, Joint Chiefs of Staff in July 2001. These units are mainly the National Guard's combat units, for example the fifteen enhanced Separate Brigades (eSBs) and the two Special Forces Groups.

The National Guard Bureau should develop a training program to incorporate all National Guard units on a rotating basis to conduct border security missions while at the same time meeting essential unit training requirements.

Congress must allow the National Guard to perform the border security mission under *Title 32* status. Performing the border mission in a *Title 32* status eliminates any PCA issues and the operational problems caused by the awkward command arrangements.

Congress should approve, fund and resource the “Guard Act of 2003” which would allow governors to submit a homeland security activities plan to the Secretary of Defense. The governors, in turn, would receive funds to cover pay, clothing, travel and other expenses incurred by National Guardsmen providing homeland security while not under federal control.

CONCLUSION

The National Guard has contributed to every major military campaign in the nation's history; nineteen Army Guard divisions were deployed in World War II, 138,000 Army Guardsmen were mobilized for the Korean War, over 163,000 Army Guardsmen were called up for the 1991 Gulf War, and thousands are currently serving in the war against terror.⁶⁹ The traditional dual status mission, which permits soldiers and airmen to be a federal resource or a state-controlled law-enforcement and consequence management resource, is a unique asset to the nation.

The founding fathers were clear about their intentions for a “small standing army complemented by the citizen soldiers.” A reverberation of these early intentions was seen in the 1973 Total Force Policy. The Total Force Policy was designed to involve a large portion of the American public by mobilizing the National Guard from its thousands of locations throughout the United States when needed.⁷⁰ The Total Force Policy requires that all active and reserve military organizations of the U.S. be treated as “a single integrated force.”

Despite the awkward implementation plan by DoD to put soldiers on the border, the National Guard performed exemplary. The National Guard's entrenched community ties have made them experts in dealing with civilian agencies at the federal, state, and local levels. Currently, the National Guard is not funded or properly equipped and trained to perform the border mission. If congress is willing to make some modifications to the National Guard's force structure and changes to the full-time manning, the National Guard could perform its war-fighting mission and assist federal law enforcement agencies in securing U.S. borders. It is not prudent to take trained war-fighters at this critical moment and make them “rent-a-cops” on the border.

Congress should adequately fund the National Guard to support the governors in homeland security missions. This would require funding above and beyond what the states currently budget for the National Guard when called for a natural disaster or civil disturbance. The Adjutant General's Association of the United States (AGAUS) proposed a plan to congress

that would fund a program for the "National Guard to execute a Governor's Plan for Homeland Security."

National Guardsmen must be in a *Title 32* status in future emergency homeland security missions. This is paramount, particularly if specialized assets, such as the CD-RAID, are used to assist the mission. *Title 32* would have avoided the unnecessary and redundant actions at the mobilization sites directed by First and Fifth Army. Calling up the National Guard under *Title 10* for the border mission immediately created problems for the states, DoD, and the lead federal agencies. It also degraded the wartime readiness of each unit from which the soldiers were mobilized. "It interfered with the effective force management of the state's military personnel; and prevent state- level personal accommodations of soldiers' and civilian employers' special needs during the term of that service."⁷¹

Attempting to amend the PCA to allow the National Guard to assist law enforcement agencies in a useful manner would provoke resistance from DoD. "It appears that DoD is resisting any further expansion of the use of *32 USC 502* -'other duty,'" said Col. Tipton. Tipton said it was the president that pushed DoD to accept the airport mission. DoD maintained that the National Guard could perform only training missions in a *Title 32* status, notwithstanding the language of *32 USC 502f*, which clearly provides for "other duty".⁷²

With war against Iraq, seemingly imminent, and other potential areas of conflict around the world, the primary mission of the National Guard remains to prepare for war.

As General George Patton said in a speech to his troops given in England, June 5, 1944:

"You may be thankful that twenty years from now when you are sitting by the fireplace with your grandson on your knee and he asks what you did in World War II, you won't have to cough, shift him to the other knee and say, 'Well, your Granddaddy shoveled shit in Louisiana.' No, Sir, you can look him straight in the eye and say, 'Son, your Granddaddy rode with the Great Third Army and a Son-of-a-Goddamned-Bitch named Georgie Patton!'"

WORD COUNT =8,461

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